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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,263	09/16/2003	William Peter Grant	COOK1	1451

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EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/663,263

Applicant(s)

GRANT ET AL.

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-16 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/16/03</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (2,079,567).

With respect to claim 1, Anderson discloses a combination bone fixation/immobilization apparatus comprising a foot plate (9) adapted to have one or more transfixation wires (7,8,41) fixed thereto; and a substantially rigid leg support assembly (63,66) adapted to receive a patient's leg, the leg support comprising a cuff, as set forth in page 2, column 2, line 5 and strap (19) adapted to secure the cuff around the patient's leg, wherein the leg support is rigidly attached to the foot plate; as best seen in FIGS.6,7; whereby a patient's foot may be fixed with transfixation wires, and the foot is simultaneously immobilized with respect to the ankle and lower leg; as best in FIGS.8,9.

Since applicant is only claiming that the foot plate, the leg support the strap are only "adapted to " and the patient's foot "may", the applicant is therefore not positively claiming the subject matter, the Anderson reference meets the limitations as claimed.

With respect to claim 2, Anderson discloses a foot support (18) rigidly attached to the foot plate.

With respect to claim 8, Anderson discloses all the limitations as best seen in FIG.1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 6, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (2,079,567) in view of Numes et al. (5,833,639).

With respect to claims 3,6,7, it is noted that Anderson did not teach of a leg support including a liner foreplate, or a bladder filled with air and a foam molded cushion; as claimed by applicant. However, in a similar art, Numes evidences the use of a leg support including all the above named characteristics to provide support to the lower leg of the patient.

Therefore, given the teaching of Numes, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Anderson, as taught by Numes to provide improved support to the lower leg of the patient.

Claims 4, 9,13, 15,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (2,079,567) in view of Malewicz (5,520,627).

With respect to claims 4, 9,13,15,16, it is noted that Anderson did not teach of a variable adjustable height connection between the foot plate and the foot support, and a

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foot support assembly rigidly attached to the leg support, the foot plate positioned around and outside the foot support, and the rigid attachment being a hinge; as claimed by applicant. However, in a similar art, Malewicz evidences the use of such characteristics in a leg support to permit varying angle between the foot plate and the foot support and to increase or decrease the amount of torque applied across the leg support and the foot support.

Therefore, given the teaching of Malewicz, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Anderson, as taught by Malewicz, to permit varying angle between the foot plate and the foot support and to increase or decrease the amount of torque applied across the leg support and the foot support.

Claims 10,11,12, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (2,079,567) in view of Malewicz (5,520,627) in view of Numes et al. (5,833,639).

With respect to claims 10,11,12,14 it is noted that the above combination of references did not teach of a leg support including a liner foreplate, or a bladder filled with air and a foam molded cushion; as claimed by applicant. However, in a similar art, Numes evidences the use of a leg support including all the above named characteristics to provide support to the lower leg of the patient.

Therefore, given the teaching of Numes, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of

Anderson/Malewicz, as taught by Numes to provide improved support to the lower leg of the patient.

Allowable Subject Matter

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,092,321	03-1992	Spademan
5,070,868	12-1991	Hepburn et al.
5,176,623	01-1993	Stetman et al
4,338,927	07-1982	Volkov et al.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene
April 01, 2005


PEDRO PHILOGENE
PRIMARY EXAMINER